

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

THOMAS FORBUSH,

Plaintiff,

v.

ILYA BERENSHTEYN,

Defendant.

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Case No. 2:23-cv-173

Judge Travis R. McDonough

Magistrate Judge Cynthia R. Wyrick

MEMORANDUM OPINION

Before the Court is Magistrate Cynthia R. Wyrick’s report and recommendation (Doc. 5), which recommends that the Court dismiss Plaintiff’s complaint (Doc. 1).

Plaintiff filed the original complaint (Doc. 1) in this action on November 27, 2023, and shortly thereafter filed a motion for leave to proceed *in forma pauperis* (Doc. 4). Under the Prison Litigation Reform Act, district courts must screen pro se complaints and *sua sponte* dismiss any claims that are frivolous or malicious, fail to state a claim on which relief may be granted, or name a defendant who is immune. *See* 28 U.S.C. § 1915(e)(2); *Baker v. Wayne Cnty. Fam. Indep. Agency*, 75 F. App’x 501, 502 (6th Cir. 2003) (“The statute requires courts to dismiss in forma pauperis complaints that fail to state a claim[] and applies to complaints filed by non-prisoners as well as prisoners.” (citations omitted)). Therefore, Magistrate Judge Wyrick screened Plaintiff’s complaint in addition to considering the motion to proceed *in forma pauperis*.

On screening, Magistrate Judge Wyrick found that Plaintiff’s complaint failed to meet the screening standard. Specifically, Magistrate Judge Wyrick found that Plaintiff’s ineffective

assistance of counsel claim was premature given he pleaded guilty to multiple offenses in Sullivan County, Tennessee. (Doc. 5, at 4–5.) Magistrate Judge Wyrick also recommends dismissal of Plaintiff’s claim that Defendant engaged in criminal conduct by improperly billing his time, because the Court lacks the ability to administer the relief Plaintiff seeks. (*Id.* at 5.) Plaintiff has filed no objections to Magistrate Judge Wyrick’s report and recommendation and the time to do so has now passed.

After reviewing the record, the Court agrees with Magistrate Judge Wyrick’s report and recommendation. The Court hereby **ACCEPTS** and **ADOPTS** Magistrate Judge Wyrick’s report and recommendation (Doc. 5). This action **SHALL** be **DISMISSED WITHOUT PREJUDICE** as to Plaintiff’s ineffective-assistance-of-counsel claim and **WITH PREJUDICE** as to Plaintiff’s claim regarding Defendant’s alleged criminal conduct.

AN APPROPRIATE JUDGMENT WILL ENTER.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE